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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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EASTERN DISTRICT OF CALIFORNIA

In re JOHN R. FRESK and MIRIAM K. FRESK, Debtors.	Case No. 05-22037-C-7 DC No. MBB-1

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION FOR RELIEF FROM AUTOMATIC STAY

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

Findings of Fact

Debtors filed this voluntary chapter 7 petition on February 25, 2005. They scheduled real property commonly known as 2859 SE 98th Avenue, Portland, Oregon ("the property") as an

asset of the estate. The property was scheduled as exempt in the amount of $3,659.50. The chapter 7 trustee filed a report finding that there was no property available for distribution from the estate over and above that exempted by debtor.

On March 10, 2005, WM Specialty Mortgage, LLC ("movant") filed a motion, notice, and declaration requesting that this court vacate the automatic stay to permit movant to commence foreclosure proceedings against the property. The motion, notice, and declaration were properly served and a final hearing thereon was set for April 12, 2005. Movant requests attorneys' fees and costs.

The motion and declaration establish that the property is worth $175,000. Movant asserts that it is owed $129,274.96, including $1,150 for bankruptcy attorneys' fees and costs and $150 for filing fees. Debtor's schedules indicate she is indebted to movant in the amount of $123,578.97. Another lien in the amount of $47,761.53 encumbers the property. Using the numbers in debtors' schedules, debtor has equity in the amount of $3,659.50. Likewise, debtor has claimed exempt $3,659.50.

On April 12, 2005, the court continued the motion to April 26, 2005. After the continued hearing on April 26, the court concluded that it would resolve the relief from stay motion as submitted and further continue the hearing on movant's request for attorneys' fees and costs.

Conclusions of Law

The automatic stay of acts against the debtor in personam and of acts against property other than property of the estate continues until the earliest of the time when the bankruptcy

case is closed, dismissed, or an individual in a chapter 7 case is granted a discharge. 11 U.S.C. § 362(c). However, the automatic stay may be terminated earlier if debtor fails to adequately protect the secured party's interest, § 362(d)(1), and, with respect to a stay of an act against property, the debtor does not have equity in the property, § 362(d)(2)(A), and the property is not necessary to an effective reorganization. § 362(d)(2).

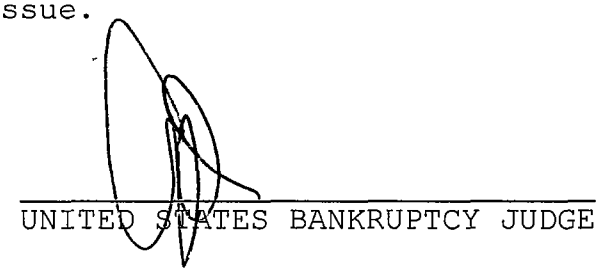
In this instance, debtor has equity in excess of $3,000. As such, the motion requesting relief from the automatic stay as against the debtors shall be denied without prejudice.

Because the trustee filed a no asset report, the motion will be granted as to the trustee.

Additionally, the hearing on movant's request for attorneys' fees and costs is continued to June 7, 2005. Any party wishing to supplement the record may do so before May 31, 2005.

An appropriate order will issue.

Dated: April 26, 2005



UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

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Costa Mesa, CA 92626

Office of the United States Trustee
United States Courthouse
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Dated: 4/5/2005

Deputy Clerk